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JOHN CRIGLER

AUG 16 1993

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

August 16, 1993

Mr. William F. Caton
Acting Secretary
Federal Communications Commission
1919 M Street, N.W.
Washington, D.C. 20554

OUR FILE NO.
1153-101

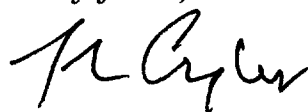
Re: MM Docket No. 93-170
RM-8250
Bemidji, Minnesota

Dear Mr. Caton:

Transmitted herewith on behalf of the Red Lake Band of Chippewa Indians, are the original and four copies of its Comments and Counterproposal in the above-captioned proceeding.

Please refer any questions concerning this matter directly to this office.

Sincerely yours,



John Crigler

JC/lgs

Enclosure

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AUG 16 1993

Before The

Federal Communications Commission FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Washington, D.C. 20554

In The Matter Of

Amendment of Section 73.202(b)
Table of Allotments
FM Broadcast Stations
(Bemidji, Minnesota)

MM Docket No. 93-170
RM-8250

TO: Chief, Allocations Branch

Comments and Counterproposal of Red Lake Band of Chippewa Indians

The Red Lake Band of Chippewa Indians ("Red Lake"), pursuant to Section 1.415(a) & (b) of the Commission's Rules and by its attorneys, hereby files its comments and a counterproposal in the above-captioned proceeding to amend the FM Table of Allotments, 47 C.F.R. § 73.202(b).¹

Introduction

1. Thomas J. Lijewski ("Lijewski") has proposed the assignment of Channel 238C1 to Bemidji, Minnesota. As a counterproposal, Red Lake requests that the Commission amend the FM Table of Allotments, Section 73.202(b), as follows:

<u>Community</u>	<u>Present Channel</u>	<u>Proposed Channel</u>
Red Lake Reservation, MN	None	238C1

¹ The *Notice of Proposed Rule Making* authorizes the filing of comments on or before August 16, 1993. Thus, these comments are timely filed. On July 21, 1993, Red Lake filed informal comments in this proceeding. The comments filed today supplant those earlier comments.

Allotment of Channel 238C1 to Red Lake Reservation satisfies the Commission's mileage separation requirements. *See Exhibit 1, Engineering Statement of Gray Frierson Haertig* at 1. From the coordinates proposed, the entire Reservation will be encompassed by a city grade contour.

2. Red Lake hereby expresses its intention to file an application for Channel 238C1 in the event the Commission allots Channel 238C1 to the Red Lake Reservation.

**Red Lake is a Community to Which the
Commission May Allot an FM Channel**

3. The Commission will allot an FM Channel to a community that is either listed in the United States Census or incorporated. *Trade, North Carolina*, 6 FCC Rcd 5835, 5836 (Chief, Allocations Branch 1991); *Greenwood, South Carolina*, 2 FCC Rcd 3583, 3586 (Chief, Policy and Rules Division 1987). If the Community is neither incorporated nor listed in the census, the Commission will consider the social, economic, cultural, or governmental identity of the community to determine whether it warrants an allotment. *Trade*, 6 FCC Rcd at 5836; *Virgie, Kentucky*, 4 FCC Rcd 7475, 7476 (Chief, Allocations Branch 1989).

4. In considering whether a place qualifies as a community for allotment purposes, the Commission considers various indicia of self-government, business, education, public utilities, and cultural entities. Consideration of these indicia have led the Commission to conclude that an area such as a military base qualifies as a community for allotment purposes. *Fort Rucker, Alabama*, 5 FCC Rcd 37, 38 (Chief, Allocations

Branch, 1990); *see also* *Camp Lejeune, North Carolina*, 43 RR2d 900 (1978), *aff'd*, 47 RR2d 1059 (1980).

5. Red Lake Reservation abundantly possesses the necessary criteria. The Reservation consists of an area of 805,000 acres and a population of 6,000. The Reservation has its own municipal government, headed by the Red Lake Tribal Council, an 11 member governing body. *See Exhibit 2, Statement of Francis Downwind* at 1. The government provides public services such as road maintenance, police protection, fire department, trash collection and disposal, sewage treatment, public library, and tribal courts. *Id.* In addition, the tribal government issues automobile license plates to residents of Red Lake Reservation. *Id.* Other services provided by the government include schools (a high school in Red Lake and elementary schools in Red Lake and Ponemah), a hospital, and three post offices (in Red Lake, Redby, and Ponemah). *Id.* Local businesses include a fish hatchery, lumber saw mill, green house and a casino. *Id.* Two public schools, a Catholic Mission School, a community center (pool and gymnasium), water, sewage and truck services, a retirement community, two churches, two commercial shopping centers, a mall, a clinic, and emergency care facilities are also located on Red Lake Reservation. *Id.*

***Red Lake's Proposal is Superior
to the Lijewski Proposal***

6. When deciding which of two mutually exclusive proposals to grant, the Commission considers which proposal better serves the Commission's priorities in allotting FM Channels. The proposals, ranked in order of preference, are as follows:

1. First full-time aural service
2. Second full-time aural service
3. First local service
4. Other public interest factors

Revision of FM Assignment Policies and Procedures, 90 FCC 2d 88, 91 & 92 (1982).

7. Mr. Lijewski proposes the allotment of Channel 238C1 to Bemidji, Minnesota as that community's seventh local service.² Mr. Lijewski has not stated an intention to file an application should the Commission allot Channel 238C1 at Bemidji.

8. Channel 238C1 would be Red Lake Reservation's first local service.

9. Unique public interest factors also favor the allotment of Channel 238C1 to the Reservation. As set forth in Exhibit 2, the Reservation is currently unserved by any broadcast stations which air programs in the Ojibwe language, or which are directed to the unique interests and concerns of Reservation residents.

10. Because the Commission favors the provision of first local service over seventh local service, and in light of the public interest factors set forth above, Red Lake's proposal is the superior one. See *Warren, Ohio*, 59 RR 2d 1179, 1183 (Chief, Policy and Rules Division 1986).

² KBUN(AM), KBHP(FM), KBSB(NCE-FM), KCRB(NCE-FM), KKBJ(AM), and KKBJ(FM) are licensed to Bemidji, Minnesota. Noncommercial stations are counted in determining the number of local transmission services in a community. See *Fairbault, Minnesota*, 7 FCC Rcd 3937, 3939 (Chief, Policy and Rules Division 1992).

WHEREFORE, for the foregoing reasons, the Red Lake Band of Chippewa Indians hereby requests that the Commission grant this counterproposal and deny Mr. Lijewski's petition for rulemaking.

Respectfully submitted,

RED LAKE BAND OF CHIPPEWA INDIANS

A handwritten signature in dark ink, appearing to read "J. Crigler", is written over a horizontal line.

JOHN CRIGLER, ESQ.
DAVID G. O'NEIL, ESQ.

Its Attorneys

HALEY, BADER & POTTS
Suite 900
4350 North Fairfax Drive
Arlington, VA 22203-1633
703/841-0606

August 16, 1993

EXHIBIT 1

FACSIMILE
503-223-6909

TELECOMMUNICATIONS ENGINEERING
GRAY FRIERSON HAERTIG
17714A SOUTH EAST ADDIE STREET
MILWAUKIE, OREGON 97267
503-223-1441
503-654-1142

ENGINEERING REPORT

This engineering report is being offered on behalf of the Red Lake Band of Chippewa Indians in support of a Proposed Rulemaking to amend the Table of Allotments contained in 47 CFR §73.202(b), to add channel 238C1 at Red Lake Indian Reservation, Minnesota, as the first transmission service to this community.

It is proposed that this allotment be situated at:

47° 55' 30" North Latitude and
95° 19' 00" West Longitude

This point lies within Zone II as defined in 47 CFR §73.205(c). 43 CFR §73.210(a) permits the allotment of Class C1 facilities in Zone II.

The accompanying allocation analysis (Page 3) shows that a Class C1 allotment at this location meets the pertinent separation requirements spelled out in 47 CFR §73.207(b)(1) with regards to all domestic allotments and assignments with the exception of Proposed Rulemaking RM-8250, MM Docket No. 93-170, filed by Thomas J. Lijewski, which seeks to allot channel 238C1 to Bemidji, Minnesota. This Proposed Rulemaking is offered as a counter-proposal to Mr. Lijewski's petition.

The proposed allotment is within 320 kilometers of the common border of the United States and Canada. The allocation analysis shows that a Class C1 allotment at this location meets all the pertinent separation requirements spelled out in 47 CFR §73.207(b)(2) with regards to all Canadian allotments and assignments. The data for this analysis was taken from the Commission's FM Database dated 28 July 1993 as provided by Communications Data Service.

The accompanying service contour map shows that it is possible to place a 70 dBμ or stronger signal over the full extent of Red Lake Indian Reservation, Minnesota, with Class C1 facilities located at the above coordinates. This map was prepared supposing 100 kilowatts ERP at a Height Above Average Terrain of 299 meters. This map also shows the extent of the 60 dBμ service contour for the same Class C1 facilities.

The area under the 60 dBμ contour is 16,413 square kilometers and the contour encompasses a population of 68,570.

The area under the 70 dBμ contour is 7,857 square kilometers and the population is 18,694.

**ENGINEERING REPORT – PROPOSED RULEMAKING
RED LAKE BAND OF CHIPPEWA INDIANS**

5 AUGUST 1993

Gray Frierson Haertig
Milwaukie, OR

Page 1
Aug 5, 1993

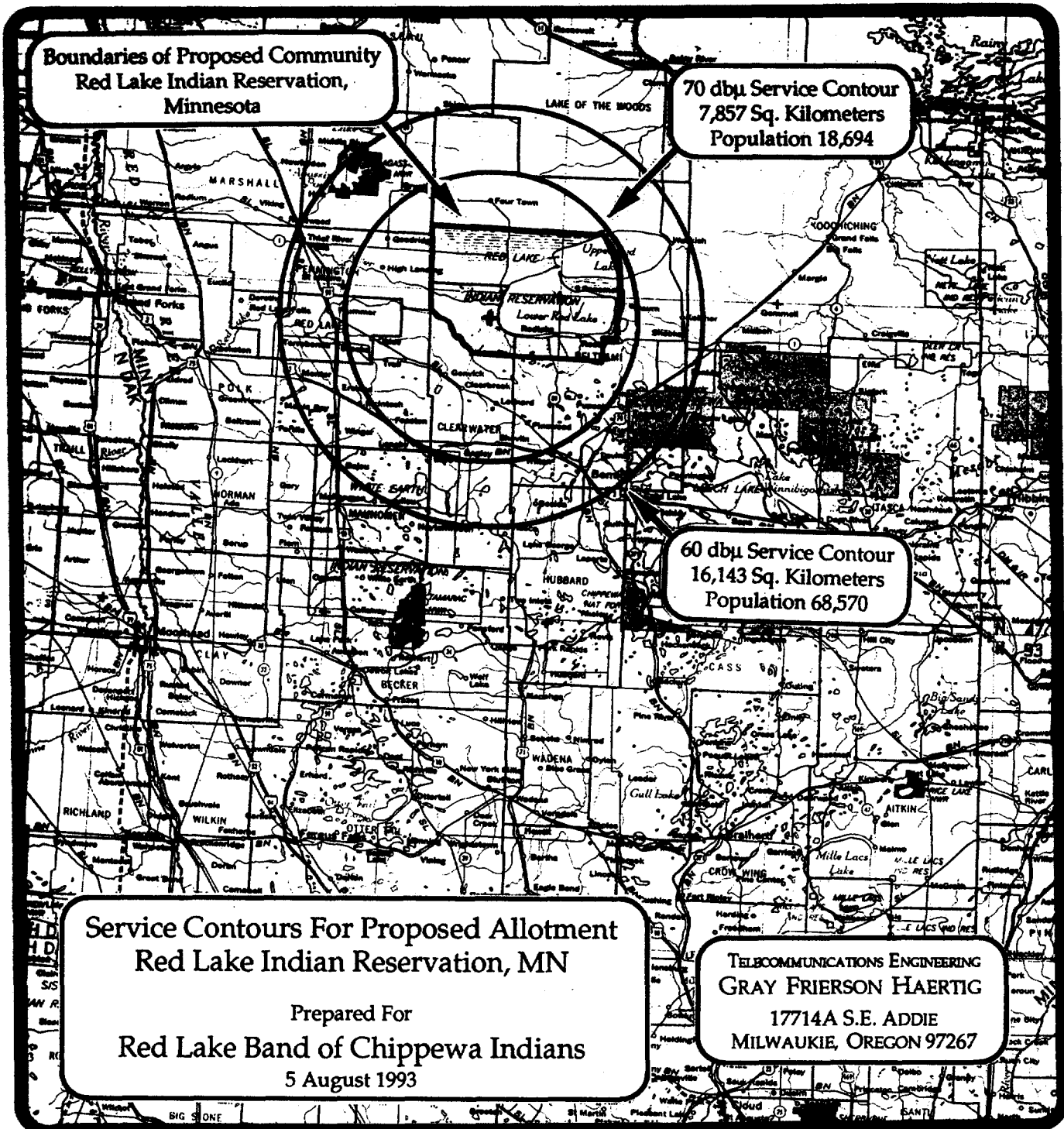
Constraints Study FM Channel 238C1

Title: Red Lake PRM	Latitude: 47-55-30
Reference City: Red Lake Indian Reservation, MN	Longitude: 95-19-00
Translators Are Not Included	FCC Database: 930728
Audit File: fms08053.A01	

Call City of License	Auth License	Licensee Name St FCC File No.	Chan Freq	ERP-kW EAH-m	Latitude Longitude	Az-to -from	Dist (km)	Req (km)
Detroit Lakes Docket: 84-719	USED	MN	236C1 95.1		46-52-05 95-56-46	202.2 21.7	126.75 44.75	82 CLEAR
Bemidji Docket: 93-170	ADD	Thomas J. Lijewski MN RM-8250	238C1 95.5		47-28-49 94-52-49	146.4 326.7	59.31 -185.7	245 SHORT
KBEK Mora	CP MOD	John James Godfrey MN BMPH-910228IC	238C3 95.5	17.0 120	45-48-57 93-32-56	149.5 330.8	270.45 59.45	211 CLEAR
Jamestown	USED	ND	238C1 95.5		46-51-52 98-40-11	246.2 63.7	279.26 34.26	245 CLEAR
KYNU Jamestown	LIC	Sorenson Broadcasting ND BLH-840905DY	238C1 95.5	100. 121	46-51-52 98-40-11	246.2 63.7	279.26 34.26	245 CLEAR
CBQSFM Sioux Narrows		ON	239A 95.7	1.30 41	49-25-43 94-03-44	28.4 209.3	191.03 27.03	164 CLEAR
Crookston	USED	MN	241C1 96.1		47-50-43 96-50-22	266.1 85.0	114.24 32.24	82 CLEAR
KQHT Crookston	LIC	Kdez, Inc. MN BLH-850913KA	241C1 96.1	100. 126	47-50-43 96-50-22	266.1 85.0	114.24 32.24	82 CLEAR

End of Constraints Study FM Channel 238C1

**- GRAY FRIERSON HAERTIG -
TELECOMMUNICATIONS ENGINEERING**



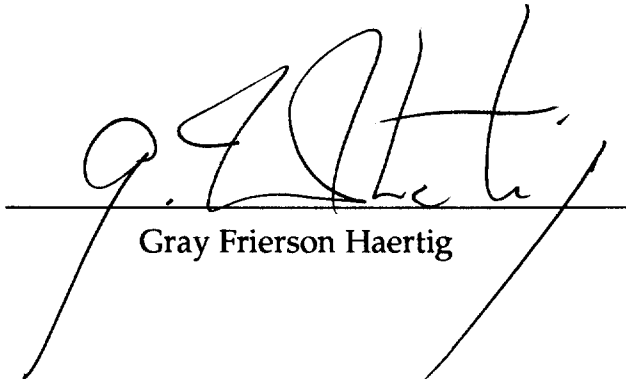
ENGINEER'S STATEMENT

I have been retained by The Red Lake Band Of Chippewa Indians to prepare this engineering report and associated exhibits in support of this Proposed Rulemaking.

All material has been prepared personally by myself and to the best of my knowledge and ability reflects the actual facts of the matter.

I am a Broadcast Engineer of 26 years experience and my credentials are a matter of record with the Commission.

Respectfully submitted this fifth day of August, 1993,



Gray Frierson Haertig

– GRAY FRIERSON HAERTIG –
TELECOMMUNICATIONS ENGINEERING

EXHIBIT 2

DECLARATION

I, Francis Downwind, hereby declare as follows:

1. I am the Director, Red Lake Nation Public Education Radio.
2. The Red Lake Tribal Council, the governing body of the Red Lake Band of Chippewa Indians, has authorized me to make the enclosed statement.
3. The factual representations contained in the attached statement were prepared by me or under my supervision.

I hereby declare, under penalty of perjury, that the foregoing is true and correct to the best of my knowledge and belief.


Francis L. Downwind

Date: August/2, 1993

STATEMENT OF FRANCIS DOWNWIND

The Red Lake Reservation ("Reservation"), located approximately 35 miles north of Bemidji, Minnesota, consists of a solid block of approximately 805,000 acres of land owned by the Red Lake Band of Chippewa Indians ("Red Lake Band"). The Reservation is roughly the size of Rhode Island. Approximately 6,000 people live on the Reservation. Ninety-eight percent (98%) of these are enrolled in the Red Lake Band.

The Red Lake Band are the descendants of the Anishinabe people, who have occupied their homeland in northern Minnesota since aboriginal times. The Red Lake Band is a federally recognized, independent Indian Nation which possesses the powers of a sovereign state. Neither the traditional chiefs nor the current governing body of the Red Lake Band has ever relinquished sovereignty. The Red Lake Band is one of only two Native American tribes which has retained its land holdings in tribal ownership. No lands within the Reservation are owned by individuals.

Since 1959, the Red Lake Band has been governed by a Tribal Council. That Council now consists of an 11-member governing body elected by the tribal members residing on the Reservation. The tribal government employs over 1,400 people. It provides the following public services: road maintenance, police protection, fire department, trash collection and disposal, sewage treatment, public library, and tribal courts. In addition, the tribal government issues automobile license plates to Reservation residents. The Tribal Council represents the Red Lake Nation in negotiations with the U.S. Government on various matters, including treaties.

Other services provided by the Reservation include schools (with a high school in Red Lake, and elementary schools in Red Lake and Ponemah), hospital (in Red Lake), post offices (in Red Lake, Redby and Ponemah).

The Red Lake Band operates a fish hatchery, lumber saw mill, green house and casino and conducts commercial fishing and wild rice harvesting on the Reservation.

Tribal offices and services, the Reservation's judicial system, the hospital and extended care facility, two public schools, and a Catholic mission school, a community center (pool and gymnasium), water, sewage, and truck services and a shopping center are located in Red Lake (population 1,068),¹ the largest of the villages on the Reservation. Other governmental services include the public health service hospital (USPHS), a postal service and an office of The Bureau of Indian Affairs, operated by the U.S. Department of Interior. There are currently plans for a bank to open in the shopping mall facility.

The fishing cooperative and hatchery, the sawmill, elderly home and green house are located in Redby (population 787). Two churches, a commercial area that includes three stores and a garage, a post office, a U.S. government commodity food distribution program, and the Indian Action Program, a training facility for heavy equipment operators, are located in Redby.

Ponemah, a traditional Indian community, is located on the north shore of Lower Red Lake. Ponemah has a public elementary

¹ The 1990 population for Red Lake and Redby were obtained from the U.S. Census Bureau. Both Red Lake and Redby are Census Designated Places.

school, clinic and emergency care facilities, post office and a tribal owned mini-mall.

Little Rock, located west of Red Lake town is primarily a residential village served by a gas station and convenience store. Activities center around the community center.

The Red Lake Band has a distinct, Native American culture. It speaks the Ojibwe language and preserves unique tribal traditions. No broadcast stations are currently licensed to the Reservation. No radio service received on the Reservation broadcasts programming which specifically addresses issues of concern to the Reservation. For example, no broadcast stations provide coverage of such matters as school board meetings, weather updates that affect commercial fishing, or local sporting and civic events. Nor does the Reservation receive programming in the Ojibwe language, programs concerning elder news and events, the oral traditions of the Red Lake Band or Native American music. The only currently available means of distributing information on such subjects is a newsletter, "The Red Lake Nation," which is published monthly by the Tribal Council.

CERTIFICATE OF SERVICE

The undersigned, an employee of Haley, Bader & Potts, hereby certifies that the foregoing document was mailed this date by First Class U.S. Mail, postage prepaid, or was hand-delivered*, to the following:

Ms. Kathleen Scheuerle*
Federal Communications Commission
Mass Media Bureau
2025 M Street, N.W.
Room 8317
Washington, D.C. 20554

Timothy E. Welch, Esq.
Dean, George, Hill & Welch
1330 New Hampshire Avenue, N.W.
Suite 113
Washington, D.C. 20036
Counsel for Thomas J. Lijewski

A handwritten signature in cursive script, appearing to read "Lucy J. Santag", written over a horizontal line.

August 16, 1993